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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 16th day of June, 1998

Before:

THE HON'BLE MR. JUSTICE R.V. RAVEENDRAN

Writ Petition No. 574 of 1993

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M/s. Khader Complex Enterprises,
A partnership Firm represented by
its Managing Partner Mrs. Gulzar Banu,
w/o Janab K. Ahmed Hussain,
Khader Complex, M.G. Road,
Chikmagalur

..Petitioner

(By Sri H.S. Jois, Advocate)

-Vs-

City Municipal Council,
Chikmagalur, represented by
its Commissioner

..Respondent

(By Sri G.S. Visweswara, Advocate)

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Writ Petition is filed praying to direct the respondent to enquire into and determine whether there has been any encroachment effected by the petitioner or its vendor on the property of others, abutting the schedule property and there upon take appropriate action to remove the encroachment in accordance with law after due notice to the petitioner etc.,

This writ petition coming on for preliminary hearing in 'B' this day, the Court made the following:-

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Premises bearing katha No.7360/564/5763 situated in M.G.Road, Chickmagalur belong to K.Ahmed Hussain and he is registered as the kathedar of the said property in the records of the respondent Municipality. Petitioner firm claims to have purchased three portions of the said property from the said K.Ahmed Hussain under registered sale deeds dated 19-10-1989, 1-12-1989 and 5-5-1990 [Annexures A, B and C]. It may be mentioned that the Managing Partner of the petitioner firm is none other than the wife of the said K.Ahmed Hussain. The respondent issued a notice dated 3-7-1992 [Annexure-E] to K.Ahmed Hussain alleging that he had deviated from the sanctioned plan while putting up the construction and that on 7-2-1992 a portion of the deviation had been demolished and calling upon the said K.Ahmed Hussain to demolish the offending portions. He was also informed that if he failed to do so, the respondent will take action for demolition. Feeling aggrieved, petitioner has filed this petition.

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2. The petitioner contends that no notice has been issued to it in regard to the property. The petitioner also contends that without giving a hearing to them, the respondent cannot ^{have} recourse to demolition. Hence, petitioner has filed this petition seeking a direction to the respondent to (i) enquire and determine whether there has been any encroachment by the petitioner or its vendor and then take action for removal of encroachment after due notice to the petitioner; (ii) ^{in the alternative,} petitioner has sought a direction to the respondent to await the verdict of the civil Courts on the demolition questioned before the Court, before taking any action for demolition of the structure. Petitioner has also sought a direction to the respondent to forbear from effecting demolition of any portion of Khader Complex, until the determination as per prayer (i) or decision of the Civil Court as prayed in prayer (ii).

3. The notice dated 3-7-1992 is in regard to premises No.7360/564/5763. It is, however, seen that the sale deeds produced by the petitioner relate to some other property i.e., premises bearing Assessment No.5758/5756. Secondly, the

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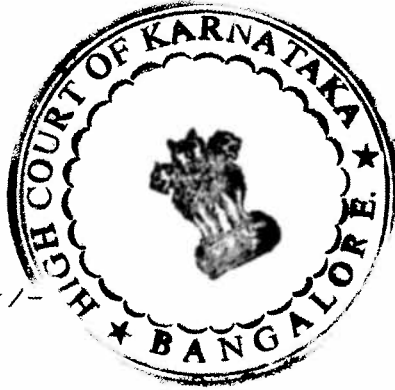
licence for construction is obtained by K.Ahmed Hussain and ^{it is stated that} K.Ahmed Hussain continues to be the kathedar in the records of the Municipality in regard to premises No.7360/564/5763. Hence, petitioner cannot make a grievance of nonissue of any notice to it.

4. The learned Counsel appearing for the respondent states that due notices have been issued to K.Ahmed Hussain before issuing the notice dated 3-7-1992. Be that as it may.

5. If petitioner claims to be the owner of the property which is subject matter of Annexure-E dated 3-7-1992, it is open to the petitioner to file objections to the said notice explaining that there is neither any encroachment while constructing the said building, nor any deviations in putting up the construction. It can also show cause as to why the building should not be demolished. If any suit is pending, the petitioner is at liberty to refer to the said suit also. If such objections are filed within one month from this date, the respondent shall consider the said

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objections and pass appropriate orders in
accordance with law. Petition disposed of
accordingly.



Bnr/-

Sd/-
JUDGE